

**SUPERIOR COURT
CIVIL ACTION
DOCKET NO.**

Defendant

**PETITION FOR APPROVAL OF
SALE OF ASSETS OF AUTUMN
HEALTH SERVICES OF
KENNEBUNK, INC. AND AUTUMN
HEALTH SERVICES OF
KENNEBUNK II, INC. TO SUNRISE
KENNEBUNK ME SENIOR LIVING,
LLC AND ESTABLISHMENT OF A
CHARITABLE FUND**

INTRODUCTION

Autumn Health is comprised of two nonprofit corporations: Autumn Health Services of Kennebunk, Inc. ("Autumn I") and Autumn Health Services of Kennebunk II, Inc. ("Autumn II"). Autumn I and Autumn II have identical boards of directors and management, and both nonprofit corporations have charitable status because they engage in activities designed to meet the housing, healthcare, and other needs of the elderly in the community. Autumn I owns Huntington Common, a retirement community located in Kennebunk, Maine, which contains

various independent and assisted living units and a Commons Building offering dining and activities rooms. Autumn II owns an adjacent tract of land containing residential cottages, known as "The River Cottages at Huntington Common," that house people who desire independent living within a retirement community. The facilities operated by Autumn I and the cottages owned by Autumn II function as a single integrated retirement community.

The acquisition and development of the facilities operated by Autumn I were financed with 501(c)(3) bonds issued by the Finance Authority of Maine ("Autumn I Bonds"). Autumn II financed the acquisition of the land and development of the cottages with tax-exempt and taxable bonds issued by the Town of Kennebunk, Maine ("Autumn II Bonds"). Despite several attempts to fashion workout arrangements, Autumn I defaulted on payment of the Autumn I Bonds on several occasions and currently is in default of its payment obligations. Autumn II is not in default of its obligations under the Autumn II Bonds. In May of 2005, the holders of the majority of the Autumn I Bonds and the Autumn II Bonds demanded that Autumn Health find a way to cure the existing defaults or the bondholders would foreclose.

In June 2005, the Board of Autumn Health hired an experienced consultant, Ziegler Capital Markets Group ("Ziegler"), to investigate and analyze the options for curing the default status of Autumn Health. Ziegler considered whether it was better for Autumn Health to refinance the bonds, enter into a joint venture with another nonprofit, or sell the facilities and repay all outstanding debt. Based upon Ziegler's recommendations, the Board voted to explore its options to pursue both a joint venture merger with another nonprofit organization and to offer the facilities for sale to prospective for-profit entities. The Board entertained acquisition and merger offers from nonprofit organizations and acquisition offers from for-profit entities, and

conducted a rigorous interview process of the entities that presented the six best offers. At the conclusion of its investigation, the Board selected Sunrise Kennebunk ME Senior Living, LLC ("Purchaser"), a for-profit entity, as the purchaser of the Autumn Health assets. Purchaser is an affiliate of Sunrise Senior Living, Inc., a company that is publicly traded on the New York Stock Exchange.

Maine statutory law requires court approval of the conversion of a public charity to a for-profit entity when the fair market value of the charitable assets is equal to or greater than \$500,000. 5 M.R.S.A. § 194-F(1). Maine Revised Statutes Title 5, Section 194-F(2) provides that this Court "shall approve a proposed conversion transaction . . . if the court finds by a preponderance of the evidence that the criteria set forth in section 194-G have been satisfied." The criteria set forth in section 194-G require that the following conditions have been met prior to court approval of the proposed conversion transaction: (1) the public charity will receive fair market value for its charitable assets; (2) the proposed distribution of proceeds of the transaction complies with section 194-H; and (3) the public charity considered the proposed conversion as the best alternative in carrying out its mission and purpose. 5 M.R.S.A. § 194-G. Section 194-G also lists other considerations that the Court may consider when appropriate. In the interest of brevity, those considerations will be addressed in the context of the required elements.

JURISDICTION

1. This Court has jurisdiction pursuant to 4 M.R.S.A. § 105 and 5 M.R.S.A. § 194-F.

PARTIES

2. Autumn Health brings this action pursuant to 5 M.R.S.A. §§ 194-C and 194-F.
3. The Attorney General is a party to this action pursuant to 5 M.R.S.A. § 194-F(1).

FACTS

4. Under the Purchase Agreement dated November 7, 2005, the Purchaser will pay Autumn Health \$38,775,000 for the assets of Autumn I and Autumn II, with \$29,347,208 allocated to Autumn I and \$9,427,792 allocated to Autumn II. *See* November 7, 2005 Purchase Agreement as amended, attached hereto as Attachment 1.

5. The projected closing date of the proposed conversion transaction outlined in the Purchase Agreement is December 20, 2005. *See* November 7, 2005 Purchase Agreement as amended, attached hereto as Attachment 1.

6. Pursuant to 5 M.R.S.A. § 194-G, an appraisal of the fair market value of the assets of Autumn Health was conducted on November 17, 2005 to value the Autumn Health assets as of the projected closing date of the conversion transaction. *See* Appraisal, attached hereto as Attachment 2.

7. The appraised fair market value of the Autumn Health assets as of December 20, 2005 is \$26,210,000 for Autumn I and \$8,420,000 for Autumn II. *See* Appraisal, attached hereto as Attachment 2.

8. The \$29,347,208 purchase price for the assets of Autumn I and \$9,427,792 purchase price for the assets of Autumn II contained in the Purchase Agreement both are greater than the fair market value of the assets of Autumn I and Autumn II, as is reflected in the Appraisal. *Compare* Appraisal, attached hereto as Attachment 2, *with* November 7, 2005 Purchase Agreement as amended, attached hereto as Attachment 1.

9. Pursuant to 5 M.R.S.A. § 194-G(3)(D), the appraisal was conducted by Mark Tracy, an independent appraiser employed by the appraisal firm of Tellatin, Short & Hansen, Inc.

Mr. Tracy has extensive experience valuing real estate, including retirement living facilities and nursing homes. *See Curriculum Vitae* of Mark Tracy, attached hereto as Attachment 3.

10. Pursuant to 5 M.R.S.A. § 194-G(3)(E), neither the appraiser, nor an affiliate of the appraiser, have acted as an underwriter or selling agent under the proposed conversion plan.

11. Pursuant to 5 M.R.S.A. § 194-H(1)(A), the proceeds of the conversion transaction remaining after satisfaction of debts and closing obligations of Autumn I and Autumn II will be distributed to the Kennebunk Savings Bank Foundation ("Foundation"), a Maine nonprofit corporation exempt from federal income tax as described in section 501(c)(3). The Foundation operates in accordance with the restrictions and limitations applicable to private foundations pursuant to 26 U.S.C. §§ 4941-4945. *See Charitable Distribution Plan*, attached hereto as Attachment 4.

12. The Foundation will hold the conversion proceeds as the HUNTINGTON COMMON CHARITABLE FUND FOR SENIORS OF THE KENNEBUNK SAVINGS BANK FOUNDATION (the "Fund"). The income and principal of the Fund shall be distributed and/or used for charitable purpose to benefit senior citizens in York County, Maine. *See Charitable Distribution Agreement*, attached hereto as Attachment 5.

13. Pursuant to 5 M.R.S.A. § 194-H(1)(B), the directors, officers and staff of the Foundation will remain independent of the Purchaser and its affiliates. *See Charitable Distribution Agreement*, attached hereto as Attachment 5.

14. Pursuant to 5 M.R.S.A. § 194-H(1)(B), no person who is an officer, director or staff member of Autumn Health with influence over the Conversion Plan at the time the Plan is submitted, at the time of the closing of the Conversion Transaction, or within five years

thereafter, will be an officer, director or paid staff member of the Foundation. *See Charitable Distribution Agreement, attached hereto as Attachment 5.*

15. Pursuant to 5 M.R.S.A. § 194-H(1)(B), no directors, officers, agents or employees of Autumn Health or the Foundation may benefit directly or indirectly from the conversion transaction. *See Charitable Distribution Agreement, attached hereto as Attachment 5.*

16. Pursuant to 5 M.R.S.A. § 194-H(1)(C), the Foundation has adopted a formal mechanism to avoid conflicts of interest. *See Charitable Distribution Plan, attached hereto as Attachment 4; Charitable Distribution Agreement, attached hereto as Attachment 5.*

17. Pursuant to 5 M.R.S.A. § 194-H(1)(C), grants or distributions from the Fund may not benefit the Purchaser or members of the board of directors or management of the Purchaser. *See Charitable Distribution Agreement, attached hereto as Attachment 5.*

18. Additionally, the Fund may not make a distribution to any organization employing for compensation any officer, director, or staff member of Autumn Health who had influence over the Conversion Transaction. *See Charitable Distribution Agreement, attached hereto as Attachment 5.*

19. Autumn Health, with the assistance of Ziegler, conducted an extensive analysis of its options to cure Autumn Health's default of its payment obligations. As a result of this process, which is described in detail in the Conversion Plan, attached hereto as Attachment 6, the Board of Autumn Health determined that the best alternative for carrying out Autumn Health's mission and purposes was to convert Autumn Health's assets pursuant to the Purchase and Sale Agreement with Sunrise Kennebunk ME Senior Living, LLC, and to distribute the proceeds from the sale of the assets to the HUNTINGTON COMMON CHARITABLE FUND FOR SENIORS

OF THE KENNEBUNK SAVINGS BANK FOUNDATION. *See* Conversion Plan, attached hereto as Attachment 6; Charitable Distribution Plan, attached hereto as Attachment 4.

20. The terms and conditions of the Purchase Agreement with the Purchaser, the Conversion Plan, the Charitable Distribution Plan, and the Charitable Distribution Agreement are fair and reasonable to Autumn Health. *See* November 7, 2005 Purchase Agreement as amended, attached hereto as Attachment 1; Conversion Plan, attached hereto as Attachment 6; Charitable Distribution Plan, attached hereto as Attachment 4; Charitable Distribution Agreement, attached hereto as Attachment 5.

21. Autumn Health has commissioned an independent appraisal of the assets to be transferred under the Conversion Plan to ensure that the fair market value of the assets of Autumn Health has not been manipulated by the parties in a manner that causes the fair market value of the assets to decrease. *See* Appraisal, attached hereto as Attachment 2.

22. To ensure that the conversion transaction will not result in inurement to any private person or entity, the Charitable Distribution Plan and the Charitable Distribution Agreement set forth provisions addressing conflicts of interest and prohibiting directors, officers, agents, or employees of Autumn Health, the Foundation, or the Purchaser from benefiting from the conversion transaction. *See* Charitable Distribution Plan, attached hereto as Attachment 4; Charitable Distribution Agreement, attached hereto as Attachment 5.

23. The Charitable Distribution Plan and the Charitable Distribution Agreement set forth provisions addressing conflicts of interest and prohibiting directors, officers, agents, or employees of Autumn Health, the Foundation, or the Purchaser from benefiting from the conversion transaction to ensure that the conversion transaction will be in the best interest of the

mission and purpose of Autumn Health, and that the conversion transaction will not result in a breach of fiduciary duty or violate any statutory duty or common-law duty or obligation on the part of the directors, trustees, or other parties involved in the conversion transaction or charitable distribution of the conversion proceeds. *See* Charitable Distribution Plan, attached hereto as Attachment 4; Charitable Distribution Agreement, attached hereto as Attachment 5.

24. The Board, as governing body of Autumn Health, exercised due diligence in deciding to dispose of the public charity's assets, selecting the acquiring entity, and negotiating the terms and conditions of the disposition. The decision making process is described in detail in the Conversion Plan, attached hereto as Attachment 6.

25. Autumn Health will notify the public of the proposed conversion transaction, as required by 5 M.R.S.A. § 194-F(3), by publishing its intent to enter into a conversion transaction in the York County Coast Star newspaper one day each week for three consecutive weeks, commencing within five days of the filing date of this Petition. The notice will be published in English only because there is no significant number or percentage of the population of York County eligible to be served or likely to be directly affected that needs information in a language other than English to communicate effectively.

26. The Attorney General has been provided with sufficient information and data by Autumn Health to adequately evaluate the Conversion Plan and the effects of the conversion transaction on the public.

27. The Attorney General has reviewed the Conversion Plan, the Charitable Distribution Plan, and the Charitable Distribution Agreement.

28. The proceeds of the proposed conversion transaction will be used in accordance with the terms of the Charitable Distribution Agreement and will be distributed to the Kennebunk Savings Bank Foundation, a charitable organization independent of the Purchaser.

29. Autumn Health engaged its advisor, Ziegler Capital Markets Group, to assist it to evaluate the viability of potential acquirers or merger partners, and Autumn Health also conducted an extensive interview process of the Purchaser, Sunrise Kennebunk ME Senior Living, LLC, to ensure that the Purchaser will be financially viable and will competently manage the assets of Autumn Health consistent with Autumn Health's mission. This interview process was conducted with the assistance of an experienced consultant, Ziegler, and the process is described in detail in the Conversion Plan, attached hereto as Attachment 6.

30. The conversion transaction will increase the availability and accessibility of services to the community because the Purchaser will continue to operate the senior living facilities and the proceeds from the sale of the assets of Autumn Health will benefit seniors in York County through grants from the HUNTINGTON COMMON CHARITABLE FUND FOR SENIORS OF THE KENNEBUNK SAVINGS BANK FOUNDATION. See Charitable Distribution Plan, attached hereto as Attachment 4; Charitable Distribution Agreement, attached hereto as Attachment 5.

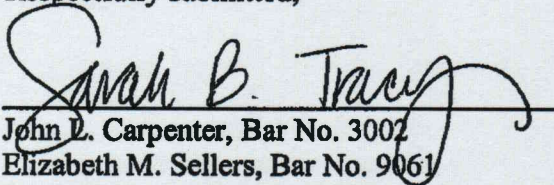
31. The conversion plan and transaction complies with all applicable laws including the Maine Nonprofit Corporation Act and state code provisions.

WHEREFORE, Autumn Health requests that this Court:

1. Approve the Conversion Plan and the Charitable Distribution Plan; and
2. Issue such other and further relief as this Court deems appropriate.

Respectfully submitted,

Dated: November 18, 2005


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